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December 10, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Suite TW-A325
Washington, D.C. 20554

Re: Application of Bell Atlantic Pursuant To Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in New York, CC Docket No. 99-295

Dear Ms. Salas:

The following document was provided today to Helgi Walker, Senior Legal Advisor to Commissioner Furchtgott-Roth, Kyle Dixon, Legal Advisor to Commissioner Powell, and Sarah Whitesell, Legal Advisor to Commissioner Ness. The document addresses NorthPoint Communications, Inc.'s views regarding issues pending before the Commission in the above-referenced proceeding.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), an original and two copies of this letter and enclosure are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

Ruth Milkman

Enclosure

cc: Helgi Walker
Kyle Dixon
Sarah Whitesell

No. of Copies rec'd 0+2
List ABCDE

NorthPoint

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NorthPoint Communications

Re: Bell Atlantic – New York DSL performance

NorthPoint Communications, Inc. ("NorthPoint") is a national, facilities-based provider of high-speed dedicated broadband services using digital subscriber line (DSL) technology. NorthPoint has invested hundreds of millions of dollars in advanced services equipment and network technology to meet the nation's demand for broadband. NorthPoint provides its services to under-served small and medium-sized businesses and residential consumers.

NorthPoint exists because of the market-opening requirements of the 1996 Telecommunications Act, specifically the requirement that incumbent LECs lease to competitors the network bottlenecks that have stifled competition for 100 years. NorthPoint primarily leases the local loop – the twisted copper wire that runs between an end-user premises and the telephone company central office. NorthPoint leases space in those central offices and connects subscriber loops to its facilities. From there, subscribers can be connected to the Internet or other data networks and avail themselves of the always-on, high-speed connections that previously were reserved only for Fortune 500 business. Today, 95% of NorthPoint's broadband DSL customers have migrated from slow, analog dial-up connections.

This paper addresses deficiencies in Bell Atlantic-New York's compliance with its obligations under the Act that concern the deployment of competitive DSL services.

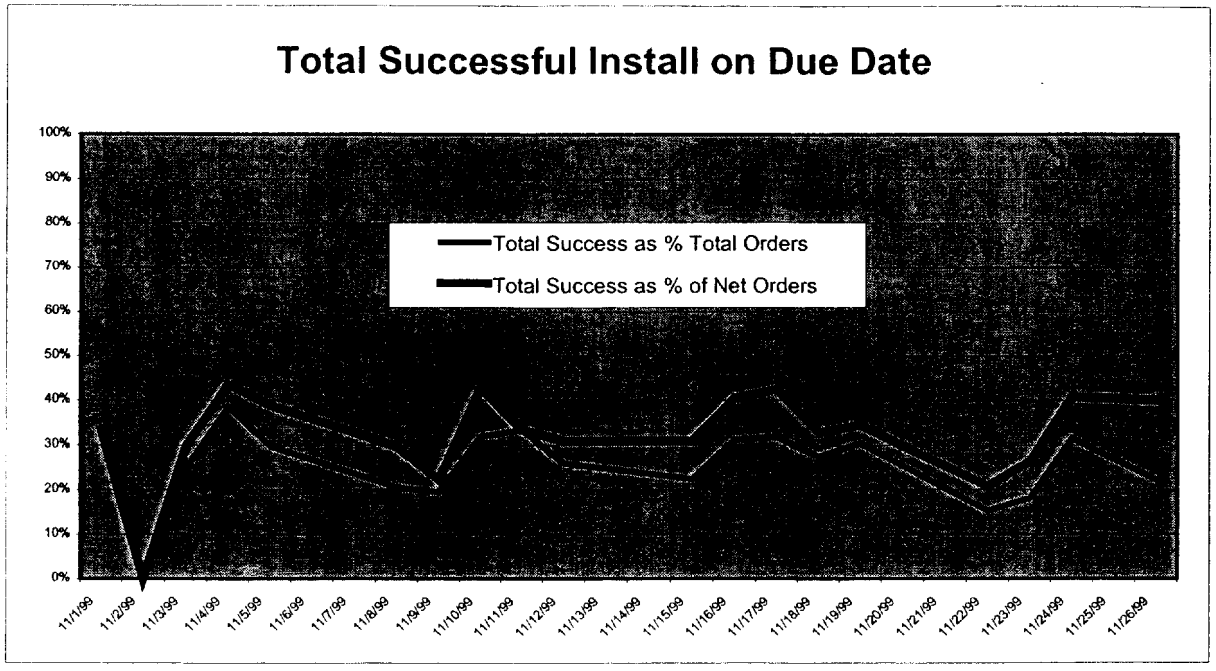
- Bell Atlantic-New York fails to meet committed due dates for loop installations.

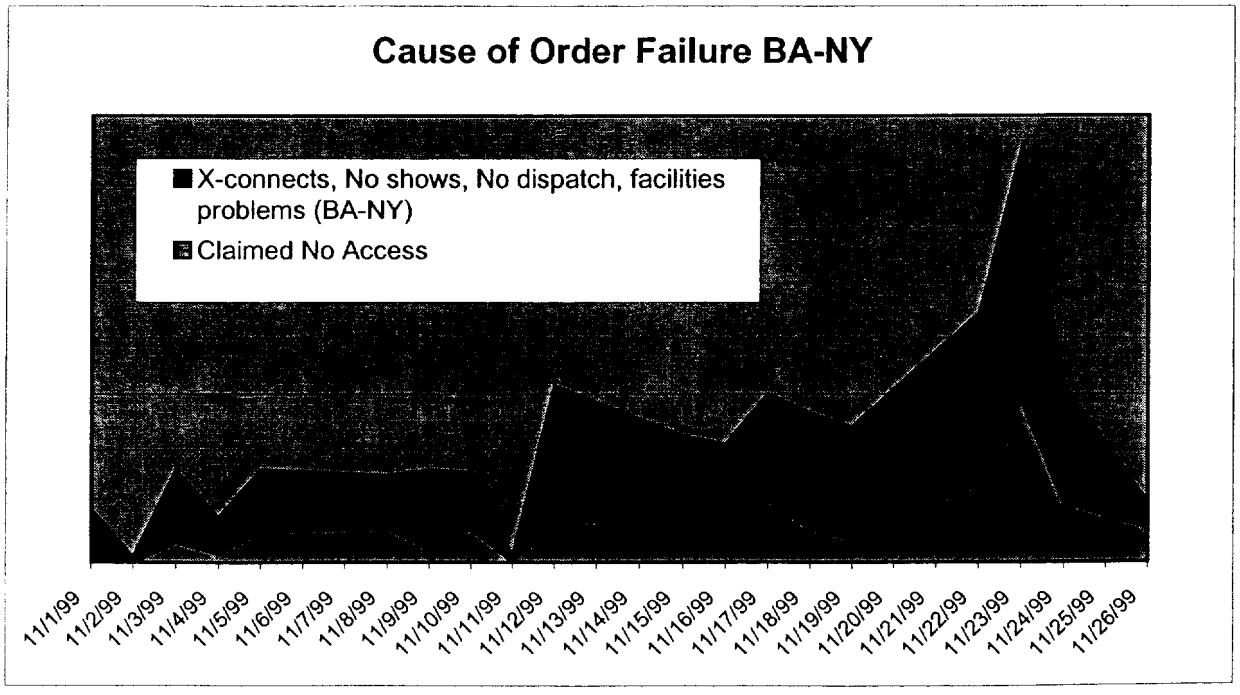
  NorthPoint provides its DSL services by leasing unbundled clean-copper, or DSL-capable loops, from Bell Atlantic. After confirming with Bell Atlantic that a qualified loop is available to the subscriber, NorthPoint places orders for those loops and receives committed installation dates from Bell Atlantic. NorthPoint confirms committed installation appointments with Bell Atlantic two days before the due date, and advises end-user customers to await Bell Atlantic technicians for installation.

  Bell Atlantic – New York failed to install loops on the committed due date on 75% of all orders in November 1999. The "failed" installations result from the simple failure of BA to dispatch technicians to complete field work ("no shows") (26% of scheduled installations), failure to complete simple Central Office pre-wiring or cross-connects (19%), other facilities problems (5%), and claims that there was "no access," or that the customer was not at the premises (30%). NorthPoint disputes BA-NY's "no access" excuse for failed installs, but even eliminating such instances from the total order volume, BA-NY still only installs 33% of net orders (total less no access).[1] In each

[1] All of the performance statistics in this paper are based exclusively on data received directly from Bell Atlantic and are definitive measures of BA-NY loop provisioning performance. Misleading references by BA to demonstrate superior performance are easily dismissed. For example, in his reply declaration, Mr. Lacouture touts that BA-NY provisioned 824 loops in August and received "only 21 repair orders," claiming a success rate of 97 percent (¶92). In fact, BA-NY specifically urged DSL CLECs *not* to submit "trouble tickets" on DSL loops in order to prevent those maintenance tasks being assigned to POTS technicians. Rather, DSL CLECs were urged to withhold "trouble ticket" claims and pursue failed installations with the provisioning group handling DSL orders.

case of a BA-NY failed commitment, the end-user customer who relied upon *NorthPoint* to meet *its* commitment was disappointed and frustrated with *NorthPoint's* performance. As a result of Bell Atlantic's inability to serve its wholesale customers, some frustrated end-users may cancel NorthPoint orders and resort to Bell Atlantic services in lieu of competitive services. This reverse incentive undermines directly the pro-competitive, deregulatory goals of the Act.





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"No access" claims by Bell Atlantic appear to be exaggerated and serve as a handy excuse when BA-NY fails to meet its commitments. Claims of "no access" by BA-NY technicians are roughly double similar claims received by NorthPoint anywhere else in the nation. In addition, follow-up calls by NorthPoint to end users who awaited BA installation undermine the veracity of BA "no access" claims.

Bell Atlantic New York performance compares poorly with other high-volume DSL markets such as San Francisco Bay Area (80% on time), Chicago (70% on time) and even Bell Atlantic's Boston metro area (60-70% on time).

- Bell Atlantic pre-order loop-qualification data system is deficient

Prior to placing a UNE loop order, NorthPoint is required to ensure that the loop serving a subscriber premise is available and capable of carrying digital signals. Bell Atlantic's pre-order loop qualification system is not available throughout the New York market (available approximately 70-75% of the time).

Moreover, Bell Atlantic's loop qualification system only tells a competitor whether the loop is suitable for Bell Atlantic's own, retail ADSL service. The system does not include data on longer loops or include critical information such as the presence of loading coils, bridged taps, repeaters or other impediments to digital service.

Bell Atlantic claims it has no obligation to provide this data to competitive DSL providers. (Lacouture reply aff. At 97-102, 105). To the contrary, the FCC's *UNE Remand* clarified that pre-qualification data must be sufficiently robust to ensure that providers offering competitive DSL services that are superior to the ILEC retail services can determine whether their competing services can be delivered over a customer's. (*Id.* At 428)

- Bell Atlantic makes competitors wait 1-3 days to confirm an order

When NorthPoint places an order for a UNE loop with Bell Atlantic, confirmation that the order is accepted, the loop is available, and a commitment to install on a date certain is not received for 24-72 hours. As a result, customers requesting service must wait up to three business days before they are told whether NorthPoint can provide the service, and then are assigned a fixed installation date for delivery of the circuit by a BA-NY technician.

On the other hand, Bell Atlantic's retail customers get *instant* notification of their eligibility of DSL service and can confirm installation dates on the phone.

BA-NY's order status delays compare unfavorably to other ILECs where such confirmations arrive in as little as 5 minutes after an order is placed. (Pacific Bell, CA).

The delay imposed on competitors is significant in that BA-NY's system makes it impossible for NorthPoint to provide real-time customer service in the same manner that Bell Atlantic can.

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The Commission has stated explicitly that competitors must be given order status information immediately, just like the ILEC provides immediate order status for itself. [2]

- Bell Atlantic handles the ordering and provisioning of DSL loops on a purely manual basis.

No orders for DSL loops to Bell Atlantic are handled on an electronic, "flow-through" basis. That is, every single order given to Bell Atlantic by NorthPoint must be modified and re-entered into old Bell Atlantic systems by Bell Atlantic service representatives. Until such flow-through capability is available, the processing and provisioning of DSL unbundled loop orders can never be expanded to achieve the necessary scale for mass-market deployment, even though compliance with the requirements of the Act and FCC rules would make such mass-market DSL competition eminently achievable.

Bell Atlantic claims that flow-through is unnecessary so long as Bell Atlantic can meet current and foreseeable demand. (*See Bell Atlantic ex parte to FCC*, November 29, 1999 at p. 1 ["To attach significance to flow through as an indirect indicator of a BOC's ability to handle expanding future demand is misplaced..."].)

First, Bell Atlantic's argument ignores directly controlling FCC precedent. In the *BellSouth Louisiana II* order, the FCC clarified that flow-through capability is essential to achieving commercial or mass-market scale:

> 108. We give substantial consideration to order flow-through rates because we believe that they demonstrate whether a BOC is able to process competing carriers' orders, at reasonably foreseeable commercial volumes, in a

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[2] BA-NY argues that firm order confirmations (FOCs) have no retail analogs, and thus, BA-NY is not obligated to provide CLECs with parity performance (e.g., real time order status). (*See* BA-NY November 29, 1999 *Ex Parte* at p.4). BA-NY's position ignores the Commission's previous orders, which have stated explicitly that FOCs do have retail analogs and thus that BOC must provide CLECs equivalent access in terms of quality, accuracy and timeliness (*i.e.,* parity). For NorthPoint that means instant order validation, due-date confirmation, and acceptance in minutes, not days.

Specificallly regarding order or "FOC" notices, the Commission stated in the *BellSouth (Louisiana II) Order* at ¶123:

> "We stated in the *BellSouth South Carolina Order* that 'the retail analogue of a FOC notice occurs when an order placed by the BOC's retail operations is recognized as valid by its internal OSS.' Yet BellSouth fails to provide any data in this regard. *As we have done in two previous orders, we reject the argument that a BOC does not have a corresponding FOC notice for its retail operations.* We reiterate that, one way for a BOC to demonstrate that it meets the nondiscriminatory standard is to provide data on the timing of its provision of FOC notices to competing carriers and data on the time it takes its retail operation to receive the equivalent of a FOC notice. *Because BellSouth has failed to provide data comparing its delivery of FOC notices to competing carriers with how long it takes BellSouth's retail operations to receive the equivalent of a FOC notice for its own orders, BellSouth has not provided sufficient evidence to demonstrate that it is providing nondiscriminatory access.* (Citations omitted; emphasis added).

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nondiscriminatory manner. Evidence of flow-through also serves as a clear and effective indicator of other significant problems that underlie a determination of whether a BOC is providing nondiscriminatory access to its operations support systems.

> 114. In prior orders, we concluded that BellSouth's practice of returning order error notices to competing carriers manually, rather than electronically via the EDI interface, is not equivalent access because manual processes generally are "less timely and more prone to errors." Among other things, manual processes tend to lead to additional errors, and to lower BellSouth's flow-through rates. . . . This does not constitute equivalent access.

Second, even assuming that the test is *results* rather than *processes* (which in the end it must be), Bell Atlantic's results are so poor as to undermine any claim that flow-through requirements are irrelevant. As demonstrated, Bell Atlantic is demonstrably incapable of meeting current demand, let alone "future demand." As both NorthPoint and the Department of Justice indicated (DOJ comments at 23), DSL demand is expected to grow substantially, month-over-month, for at least several years, and BA-NY has demonstrated a frustrating inability to meet even initial demand.

- Bell Atlantic has **no process** for advising of installation jeopardies; rather, Bell Atlantic only tells competitors that it has failed to meet its obligations *after* they have missed due dates

Bell Atlantic's poor loop installation performance is exacerbated substantially by the fact that Bell Atlantic only advises of such "misses" *after the fact*, after the customer has awaited a Bell Atlantic "no show," and *after* any possibility of salvaging customer expectations have been lost. (Bell Atlantic claimed in its 271 filings that it provides "jeopardy" notice, but this is word-games; Bell Atlantic's "jeopardies" are sent after a missed appointment, not before, and are by definition not jeopardy notices.)

Jeopardy notices are intended to notify the CLEC that compliance with a commitment by the incumbent LEC is "in jeopardy" so that the CLEC can take mitigating steps to alleviate customer harm, such as providing notice *before* the customer spends a day awaiting a BA-NY technician.

The absence of jeopardy notices alone is a sufficient basis to deny Bell Atlantic's application under FCC precedent:

> "Order Jeopardy Notices. After a competing carrier has received a FOC notice with a committed due date for installation of a customer's service, it is critical that the BOC provide the competing carrier with a timely jeopardy notice if the BOC, for any reason, can no longer meet that due date. We found in the *BellSouth South Carolina Order* that *BellSouth failed to meet the nondiscriminatory standard for OSS functions because it provided no service jeopardies* (*i.e.*, jeopardy notices for delays caused by BellSouth) to competing carriers." (Citations omitted; emphasis added). *In the Matter of Application of Bellsouth Corporation, et al., for Provision of In-Region, InterLATA services in*

Louisiana, CC Docket No. 98-121, FCC 98-271 (rel. 10-13-98) ("*BellSouth (Louisiana II) Order*") at ¶131.

The Commission must ensure that jeopardy notices are provided to DSL carriers in order to permit competitors a meaningful opportunity to compete in the provision of advanced services in New York.

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Summary of Errors in BANY Reply Declarations

Lacouture/Troy (BA) reply claim	Actual
BA-NY provisioned more than 90 percent of CLEC orders for ADSL loops on time during the months of August and September (¶ 73)	BA-NY's success in provisioning DSL capable loops on time to Data CLECs remains below 40% if a completed loop is defined as a "working loop". Measures, such as joint-testing, that are intended to improve BA-NY's ability to provision working loops, have not yet been fully implemented. Bell Atlantic technicians in New York joint-test less than 40% of the loops that are designated for joint-testing calls. Bell Atlantic's <40% performance compares unfavorably to other ILEC provisioning rates, such as Pacific Bell (approx 80%) and Ameritech (approx. 70%)
During August and September 1999, the average installation interval for competitive ADSL loops was 7.5 days, which is nearly identical to the average interval of 7.4 days for BA-NY's retail ADSL service (¶73)	First, the Commission has clarified in prior §271 Opinions that ordering UNEs does not have a retail analog. Thus, by definition, there is no BA-NY retail product to which a parity analysis could apply. Further illustrating this point, BA-NY's retail ADSL services are only provisioned on shared lines, typically with existing (working) analog voice services. In contrast, DSL CLECs currently must provide DSL services on "new" loops, untested by analog voice services. Second, BA-NY is contractually obligated to provision UNE DSL loops within five (5) days. Third, DSL CLECs should not be held to a lesser standard set by BA-NY's own anemic retail DSL offering.
"The [NYPSC] has certified that BA-NY meets this checklist requirement [loops] and found that BA-NY 'has put in place the procedures and training …to provide xDSL-capable loops…" (¶76, citing NYPSC Comments at 99).	The declarants neglected to include the remainder of the quote from the NYPSC (highlighted in yellow), which illustrates the NYPSC's concern with BA-NY ability to support competitive DSL services: "Bell Atlantic-NY has put in place the procedures and training …to provide xDSL-capable loops, and to minimize provisioning postponements and local service request

Lacouture/Troy (BA) reply claim	Actual
	confirmation delays and inaccuracies due to Bell Atlantic-NY process problems."
"[In August and September 1999], BA-NY returned confirmations on ADSL loop orders within an average of 65 hours, which is below the target of 72 hours." (¶87)	Although BA-NY provided NorthPoint no data for September 1999, BA-NY's own reported performance data for August 1999 states that BA-NY's order confirmations to NorthPoint took on average 290.37 hours. In addition, even if BA-NY were to meet its "target of 72 hours," the parity obligation for retail analogs, such as order confirmations, requires NorthPoint to receive order confirmations within a matter of seconds or minutes, not days.
Within the next two months, 93 percent of BA-NY's central offices now with collocation or now subject to pending collocation orders will be surveyed and these offices will provide CLECs with access to 90 percent of BA-NY's lines. (¶75)	Bell Atlantic's plans to survey news offices for the implementation of its own retail ADSL loop qualification database is not sufficient to meet the needs of DSL CLECs. Loop makeup information must include the robust loop data required to provide competitive services. *See* Third Report and Order, *In the matter of Implementation of Local Competition etc.* ("UNE remand"), CC Docket 96-98 at ¶ 427-28 (9/15/99)
"BA-NY provides demarcation information to NorthPoint and other CLECs when it completes the cooperative testing process." (¶97)	While this statement is technically accurate, it is misleading because it does not acknowledge that BA-NY has only cooperatively tested on less than 40% of all NorthPoint DSL loop orders since the procedure was to be fully implemented September 15, 1999.
[NorthPoint] complains that BA-NY's loop qualification database often rejects addresses that have been validated by BA's preordering OSS." (¶106) [¶] "...CLECs do not need to use address information to access the database. BA-NY recommends that they can use telephone numbers instead." (¶107).	Use of a telephone number, as with a validated address, often does not work.
BA makes these alternative [ISDN-type long length] loops available to CLECs [for the provision of DSL services through DLCs.] (¶ 78)	Data CLECs use ISDN loops to provide IDSL services to consumers served through DLCs. BA does not "de-channelize" the ISDN port cards – as other ILECs do – in order to facilitate the delivery of 140mbps services to these customers. *Cf., UNE Remand at ¶ 172-73* (ILEC must condition loops per CLEC requirements). BA's failure to de-channelize ISDN loops limits the quality and reach of

Lacouture/Troy (BA) reply claim	Actual
	competitive advanced services.
NorthPoint [and others] claim that a substantial number of DSL loops provisioned by BA-NY do not work properly [] These concerns were addressed before BA-NY filed this application. (¶81)	BA continues to fail to complete loops due to the failure to complete cross connects, provide critical demarc information, or to complete required field work. Parties have sought to address these failures by implementing joint testing, but this process has failed to markedly improve BA performance.
Through October 15, BA-NY has provisioned 824 DSL loops under the new process and has received only 21 repair orders for those loops – a success rate of over 97 percent. (¶82)	BA's references to "trouble tickets" as evidence of its provisioning success is misleading, as BA has *specifically instructed* DSL CLECs not to issue trouble tickets on these loops but rather to keep all loop provisioning failures within the installation/provisioning team. Thus, the absence of a volume of "trouble tickets" relating to DSL loops is not indicative of provisioning success.
BA-NY's on time completion performance for ADSL loops for the months of August and September was above 90 percent. (¶87)	This statistic does not represent DSL CLEC's experience, where BA on-time provisioning rates for November was less than 30%
During September, BA-NY's on time performance for DSL loops was 97%. (¶93)	See Above.
BA claims that it has no obligation to make available to DSL CLECs loop makeup data except that which is made available to its own retail representatives and that DSL CLEC complaints in this regard have "no relevance" to is application to provide Inter-LATA services. (¶ 97-102, 105)	The *UNE remand* clarifies that OSS loop makeup data must include relevant loop data regardless whether the ILEC makes it available to its retail representatives. *UNE Remand* at ¶ 428. Mr. Lacouture's claim that *all* of this information is not contained in a single electronic database (¶ 101) is irrelevant and misleading; the question is whether *any* of it is available, and whether BA makes it available to CLECs (it does not).